

HONORABLE THOMAS O. RICE

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IN UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

AVIANNA MORENO and ANDREA
CANTU,

Plaintiffs,

vs.

YAKIMA SCHOOL DISTRICT NO.
7, JOHN R. IRION, in his individual
capacity, CECILIA MAHRE, in her
individual capacity, and ROBERT
STANLEY, in his individual capacity,

Defendants.

Case No. 1:20-cv-3002-TOR

**STIPULATED PROTECTIVE
ORDER**

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items

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1 that are entitled to confidential treatment under the applicable legal principles,
2 and it does not presumptively entitle parties to file confidential information
3 under seal.

4 2. “CONFIDENTIAL” MATERIAL

5 “Confidential” material shall include the following documents and
6 tangible things produced or otherwise exchanged: Plaintiffs’ sensitive personal
7 or business information including but not limited to payroll and salary
8 information, financial records and information, social security numbers, and
9 medical records and medical information; educational records maintained by the
10 Defendant Yakima School District that would otherwise be subject to the Family
11 Educational Records Privacy Act (FERPA); and Plaintiff Avianna Moreno’s
12 educational records maintained by the Yakima Valley College that would
13 otherwise be subject to FERPA.
14

15 The following procedures shall apply to confidential materials:
16

17 1. Any document exchanged by the parties in this case that would
18 otherwise be subject to the Family Educational Records Privacy Act (FERPA)
19 will be treated as “confidential” and subject to the terms of this Stipulated
20 Protective Order.
21

22 2. Plaintiffs and their attorneys thereby agree not to disseminate any
23 Confidential materials covered by this Order to any third-party, and will only do
24 so when and only when the specific identity is needed, except to:

- 25 a. The party(ies), their attorneys and their attorney’s employees;
26 b. Consultants and experts retained by any party for the
27 purposes of assisting in the preparation or presentation of claims or defenses;
28 c. Any person for the purpose of perfecting service of notices of
29 deposition and/or subpoenas for trial upon student witnesses; and
30

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d. Any other person authorized by the Court.

3. Upon completion of this litigation, all copies of the records or documents or testimony with references to students shall remain confidential and shall continue to be kept pursuant to the above criteria.

4. Nothing contained herein shall be construed to prejudice or limit any party's right to use the records in the taking of depositions or at trial to the extent permitted, if at all, under the rules of evidence or civil procedure.

3. SCOPE

The protections conferred by this agreement cover not only Confidential material (as defined above), but also (1) any information copied or extracted from Confidential material; (2) all copies, excerpts, summaries, or compilations of Confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material.

However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Confidential material may be disclosed only to the categories of persons and under the conditions described in this agreement. Confidential material must be stored and maintained by a receiving party at a location and in a secure manner that ensures that access is limited to the persons authorized under this agreement.

1 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
2 otherwise ordered by the court or permitted in writing by the designating party, a
3 receiving party may disclose any confidential material only to:

4 (a) the receiving party’s counsel of record in this action, as well
5 as employees of counsel to whom it is reasonably necessary to disclose the
6 information for this litigation;

7 (b) the officers, directors, and employees (including in house
8 counsel) of the receiving party to whom disclosure is reasonably necessary for
9 this litigation, unless the parties agree that a particular document or material
10 produced is for Attorney’s Eyes Only and is so designated;

11 (c) experts and consultants to whom disclosure is reasonably
12 necessary for this litigation and who have signed the “Acknowledgment and
13 Agreement to Be Bound” (Exhibit A);

14 (d) the court, court personnel, and court reporters and their staff;

15 (e) copy or imaging services retained by counsel to assist in the
16 duplication of confidential material, provided that counsel for the party retaining
17 the copy or imaging service instructs the service not to disclose any confidential
18 material to third parties and to immediately return all originals and copies of any
19 confidential material;

20 (f) during their depositions, witnesses in the action to whom
21 disclosure is reasonably necessary and who have signed the “Acknowledgment
22 and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the
23 designating party or ordered by the court. Pages of transcribed deposition
24 testimony or exhibits to depositions that reveal confidential material must be
25 separately bound by the court reporter and may not be disclosed to anyone
26 except as permitted under this agreement;

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(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

4.3 Filing Confidential Material. Before filing confidential material or discussing or referencing such material in court filings, the filing party shall confer with the designating party to determine whether the designating party will remove the confidential designation, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. During the meet and confer process, the designating party must identify the basis for sealing the specific confidential information at issue, and the filing party shall include this basis in its motion to seal, along with any objection to sealing the information at issue. A motion to seal a document, even if it is a stipulated motion, must include the following:

a. A certification that the party has met and conferred with all other parties in an attempt to reach agreement on the need to file the document under seal, to minimize the amount of material filed under seal, and to explore redaction and other alternatives to filing under seal; this certification must list the date, manner, and participants of the conference;

b. A specific statement of the applicable legal standard and the reasons for keeping a document under seal, including an explanation of:

- i. The legitimate private or public interests that warrant the relief sought;
- ii. The injury that will result if the relief sought is not granted; and
- iii. Why a less restrictive alternative to the relief sought is not sufficient.

1 Failure to satisfy these requirements will result in the motion to seal being
 2 denied, in accordance with the strong presumption of the public access to the
 3 Court's files.

4 **5. DESIGNATING PROTECTED MATERIAL**

5 **5.1 Exercise of Restraint and Care in Designating Material for**
 6 **Protection.** Each party or non-party that designates information or items for
 7 protection under this agreement must take care to limit any such designation to
 8 specific material that qualifies under the appropriate standards. The designating
 9 party must designate for protection only those parts of material, documents,
 10 items, or oral or written communications that qualify, so that other portions of
 11 the material, documents, items, or communications for which protection is not
 12 warranted are not swept unjustifiably within the ambit of this agreement.
 13

14 Mass, indiscriminate, or routinized designations are prohibited.
 15 Designations that are shown to be clearly unjustified or that have been made for
 16 an improper purpose (*e.g.*, to unnecessarily encumber or delay the case
 17 development process or to impose unnecessary expenses and burdens on other
 18 parties) expose the designating party to sanctions.
 19

20 If it comes to a designating party's attention that information or items that
 21 it designated for protection do not qualify for protection, the designating party
 22 must promptly notify all other parties that it is withdrawing the mistaken
 23 designation.
 24

25 **5.2 Manner and Timing of Designations.** Except as otherwise provided
 26 in this agreement (see, *e.g.*, second paragraph of section 5.2(a) below), or as
 27 otherwise stipulated or ordered, disclosure or discovery material that qualifies for
 28 protection under this agreement must be clearly so designated before or when the
 29 material is disclosed or produced.
 30

1 (a) Information in documentary form: (e.g., paper or electronic
2 documents and deposition exhibits, but excluding transcripts of depositions or
3 other pretrial or trial proceedings), the designating party must affix the word
4 “CONFIDENTIAL” to each page that contains confidential material. If only a
5 portion or portions of the material on a page qualifies for protection, the
6 producing party also must clearly identify the protected portion(s) (e.g., by
7 making appropriate markings in the margins).

9 (b) Testimony given in deposition or in other pretrial
10 proceedings: the parties and any participating non-parties must identify on the
11 record, during the deposition or other pretrial proceeding, all protected
12 testimony, without prejudice to their right to so designate other testimony after
13 reviewing the transcript. Any party or non-party may, within fifteen days after
14 receiving the transcript of the deposition or other pretrial proceeding, designate
15 portions of the transcript, or exhibits thereto, as confidential. If a party or non-
16 party desires to protect confidential information at trial, the issue should be
17 addressed during the pre-trial conference.

19 (c) Other tangible items: the producing party must affix in a
20 prominent place on the exterior of the container or containers in which the
21 information or item is stored the word “CONFIDENTIAL.” If only a portion or
22 portions of the information or item warrant protection, the producing party, to the
23 extent practicable, shall identify the protected portion(s).

25 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
26 failure to designate qualified information or items does not, standing alone,
27 waive the designating party’s right to secure protection under this agreement for
28 such material. Upon timely correction of a designation, the receiving party must
29

1 make reasonable efforts to ensure that the material is treated in accordance with
2 the provisions of this agreement.

3 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

4 6.1 Timing of Challenges. Any party or non-party may challenge a
5 designation of confidentiality at any time. Unless a prompt challenge to a
6 designating party's confidentiality designation is necessary to avoid foreseeable,
7 substantial unfairness, unnecessary economic burdens, or a significant disruption
8 or delay of the litigation, a party does not waive its right to challenge a
9 confidentiality designation by electing not to mount a challenge promptly after
10 the original designation is disclosed.
11

12 6.2 Meet and Confer. The parties must make every attempt to resolve
13 any dispute regarding confidential designations without court involvement. Any
14 motion regarding confidential designations or for a protective order must include
15 a certification, in the motion or in a declaration or affidavit, that the movant has
16 engaged in a good faith meet and confer conference with other affected parties in
17 an effort to resolve the dispute without court action. The certification must list
18 the date, manner, and participants to the conference. A good faith effort to confer
19 requires a face-to-face meeting or a telephone conference.
20

21 6.3 Judicial Intervention. If the parties cannot resolve a challenge
22 without court intervention, the designating party may file and serve a motion to
23 retain confidentiality under Local Civil Rule 7. The burden of persuasion in any
24 such motion shall be on the designating party. Frivolous challenges, and those
25 made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses
26 and burdens on other parties) may expose the challenging party to sanctions. All
27 parties shall continue to maintain the material in question as confidential until the
28 court rules on the challenge.
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1 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
2 PRODUCED IN OTHER LITIGATION

3 If a party is served with a subpoena or a court order issued in other
4 litigation that compels disclosure of any information or items designated in this
5 action as “CONFIDENTIAL,” that party must:

6 (a) promptly notify the designating party in writing and include a
7 copy of the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena
9 or order to issue in the other litigation that some or all of the material covered by
10 the subpoena or order is subject to this agreement. Such notification shall include
11 a copy of this agreement; and

12 (c) cooperate with respect to all reasonable procedures sought to
13 be pursued by the designating party whose confidential material may be affected.

14 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

15 If a receiving party learns that, by inadvertence or otherwise, it has
16 disclosed confidential material to any person or in any circumstance not
17 authorized under this agreement, the receiving party must immediately (a) notify
18 in writing the designating party of the unauthorized disclosures, (b) use its best
19 efforts to retrieve all unauthorized copies of the protected material, (c) inform the
20 person or persons to whom unauthorized disclosures were made of all the terms
21 of this agreement, and (d) request that such person or persons execute the
22 “Acknowledgment and Agreement to Be Bound” that is attached hereto as
23 Exhibit A.
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1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 When a producing party gives notice to receiving parties that certain
4 inadvertently produced material is subject to a claim of privilege or other
5 protection, the obligations of the receiving parties are those set forth in Federal
6 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
7 whatever procedure may be established in an e-discovery order or agreement that
8 provides for production without prior privilege review. The parties agree to the
9 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.
10

11 10. NON-TERMINATION AND RETURN OF DOCUMENTS

12 Within 60 days after the termination of this action, including all appeals,
13 each receiving party must return all confidential material to the producing party,
14 including all copies, extracts and summaries thereof. Alternatively, the parties
15 may agree upon appropriate methods of destruction.
16

17 Notwithstanding this provision, counsel are entitled to retain one archival
18 copy of all documents filed with the court, trial, deposition, and hearing
19 transcripts, correspondence, deposition and trial exhibits, expert reports, attorney
20 work product, and consultant and expert work product, even if such materials
21 contain confidential material.
22

23 The confidentiality obligations imposed by this agreement shall remain in
24 effect until a designating party agrees otherwise in writing or a Court orders
25 otherwise.
26
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IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: 01/15/2021

s/ Shannon M. Mcminimee

Shannon M. Mcminimee, WSBA#34471
Lara Hruska, WSBA #46531
Alex Hagel, WSBA #55423
Cedar Law PLLC
Attorneys for the Plaintiffs

DATED: 01/26/2021

s/ Ryan P. Ford

Ryan P. Ford, WSBA #50628
Ford Law Firm PLLC
Co-Counsel for the Plaintiffs

DATED: 01/26/2021

s/ Michael E. McFarland, Jr.

Michael E. McFarland, Jr., WSBA# 23000
Attorneys for Defendants Yakima School
District, John Irion, Cecilia Mahre
& Bob Stanley

PURSUANT TO STIPULATION, IT IS SO ORDERED

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED: January 26, 2021.



A handwritten signature in blue ink that reads "Thomas O. Rice".

Honorable Thomas O. Rice
United States District Court Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name],
of _____ [print or type full address],
declare under penalty of perjury that I have read in its entirety and understand the
Stipulated Protective Order that was issued by the United States District Court
for the Eastern District of Washington on [date] in the case of *Moreno v. Yakima
Valley School District*, Case No. 1:20-cv-03002-TOR. I agree to comply with
and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to
sanctions and punishment in the nature of contempt. I solemnly promise that I
will not disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District
Court for the Eastern District of Washington for the purpose of enforcing the
terms of this Stipulated Protective Order, even if such enforcement proceedings
occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____